

REMARKS

Claim 73 is amended herein. Claims 73 and 75-82 are currently pending in the case. Further examination and reconsideration of the presently claimed application are respectfully requested.

Objection to the Specification

The Sequence Listing filed March 5, 2007 was objected to under 35 U.S.C. § 132(a) for allegedly introducing new subject matter into the disclosure. In particular, the Examiner alleges the nucleic acid sequence of SEQ ID No. 1 and the amino acid sequence of SEQ ID No. 2 were not described in the application as originally filed nor in any of its parent applications. As explained in the response to the Office Action mailed May 5, 2005, Applicants submit that the Sequence Listing originally filed for the captioned application was a subsequence of the sequences described in the application and was filed with minor errors due to the difficulty in obtaining accurate gene sequences in 1988-1989. In such a response, Applicants assert one skilled in the art would be apprised based on the specification that the Applicants had possession of SEQ ID Nos. 1 and 2 listed in the sequence listing filed on November 7, 2005. Specific support for such an assertion is delineated in the response to the Office Action mailed May 5, 2005 and is not reiterated herein for the sake of brevity. Reference to such a response, as if it was fully set forth herein, is noted in the interest to provide a complete reply to the current objection to the specification.

In the Office Action mailed February 8, 2006, the Examiner refutes such arguments and maintains that the nucleic acid sequence of SEQ ID No. 1 and the amino acid sequence of SEQ ID No. 2 are new subject matter to support a 35 U.S.C. § 112, first paragraph rejection of previous claims 73-82. Although Applicants respectfully disagreed, claim 73 was amended in a reply to the Office Action to remove reference to SEQ ID No. 2 to expedite prosecution. In the present Office Action, the Examiner maintains the conviction that the nucleic acid sequence of SEQ ID No. 1 and the amino acid sequence of SEQ ID No. 2 are new subject matter to object to the specification. Again, Applicants respectfully disagree for the reasons noted in the response

to the Office Action mailed May 5, 2005. Reconsideration of such arguments is requested. In view of the construal that new subject matter has been added to the specification, the Examiner requires on page 3 of the Office Action that SEQ ID Nos. 1 and 2 be removed from the sequence listing in reply to the present Office Action. In response thereto, Applicants request the objection to the specification and the Examiner's request to cancel SEQ ID Nos. 1 and 2 be held in abeyance until the arguments noted in the response to the Office Action mailed May 5, 2005 are reconsidered and at least until allowable subject matter is indicated for the captioned case as permitted by 37 CFR 1.111(b).

Section 112, 1st Paragraph, Rejections

Claims 73 and 75-82 were rejected under 35 U.S.C. § 112, first paragraph for containing subject matter which was not described in the specification in such a way to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention or to enable one skilled artisan to make and use the invention commensurate in scope with the claims. In particular, the Examiner states the claims are drawn to a nucleotide sequence of SEQ ID No. 3, which is broadly interpreted to encompass a fragment and as few as two contiguous nucleic acids of SEQ ID No. 3. In addition, the Examiner cites that the claims are not characterized by sufficient structure. Thus, the claims are drawn to an allegedly large genus with unknown structure. To expedite prosecution, claim 73 has been amended to be drawn to the nucleotide sequence of SEQ ID No. 3, which the Examiner admittedly states on page 8 of the Office Action is enabled by the specification. In addition, it is asserted the amendment imparts specific structure of the claimed subject matter to distinguish it from other materials. As such, it is believed the amendment addresses the concerns expressed in the Office Action regarding the pending claims. Accordingly, removal of these rejections is respectfully requested.

Section 102 Rejections

Claims 73, 75, and 77-81 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,484,728 to Serdar et al. (hereinafter referred to as "Serdar"). Claims 73, 75, 77, 78, and 80 were rejected under 35 U.S.C. § 102(b) as being separately anticipated by Serdar

and Identification of a Plasmid-Borne Parathion Hydrolase Gene from *Flavobacterium* sp. By Southern Hybridization with *opd* from *Pseudomonas diminuta* to Mulbry et al., Applied and Environmental Microbiology, May 1986, p. 926-930 (hereinafter referred to as “Mulbery”). As noted above, claim 73 has been amended to include the nucleotide sequence of SEQ ID No. 3. Neither Serdar nor Mulbery teach or suggest the nucleotide sequence of SEQ ID No. 3 and, thus, do not anticipate the limitations of claim 73 nor any of its dependent claims. Accordingly, removal of these rejections is respectfully requested.

Section 103 Rejection

Claims 76, 79, 81, and 82 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Serdar, Mulbery, or Serdar in view of U.S. Patent No. 4,849,355 to Wong et al. In the response to the Office Action mailed February 8, 2006, a declaration under 37 C.F.R. § 131 was filed establishing an invention date prior to August 26, 1988 for at least the subject matter of Fig. 1 of the captioned application which is also referenced in SEQ ID No. 3 of the sequence listing for the captioned case. As noted above, Serdar does not teach the nucleotide sequence of SEQ ID No. 3. Because the parent application relating to Serdar was filed on August 26, 1988 and because Serdar does not claim the subject matter of the pending claims, it is not available as prior art under 35 U.S.C. § 102(e) against claim 73, nor any claims dependent thereto including claims 75 and 77-81 in view of the declaration. Accordingly, removal of this rejection is respectfully requested.

CONCLUSION

This response constitutes a complete response to all issues raised in the Office Action mailed February 22, 2008. In view of the remarks herein, Applicants assert that pending claims 73 and 75-82 are in condition for allowance. If the Examiner has any questions, comments, or suggestions, the undersigned earnestly requests a telephone conference.

The Commissioner is authorized to charge any fees, which may be required, or credit any overpayment, to deposit account no. 50-1085.

Respectfully submitted,

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